

REMARKS

Claims 23-38, 40-49, 51-59, and 61 are present in this application. Claims 39, 62 and 64 have been canceled. Claims 23, 24, 38, 49, 51, 53, 55, and 56 are independent.

Claim Objections

Claims 36, 43, 57, 61, and 64 have been objected to as being improper dependent form for failing to further limit the subject matter of a previous claim. The Office Action indicates that these claims are directed to an intended use. Applicants disagree.

The claimed “is applied to research ...” is not recited as a manner in which a claimed apparatus is intended to be employed. The claims recite method steps. The claimed steps are further limited to specific applications recited in the respective claims.

Claim 39 has been objected to as being a substantial duplicate of claim 38. Applicant has canceled claim 39, as well as claims 62 and 64.

Claim 23, 24, 27, 28, 29, 33, 37, 38, 39, 46, 48, 49, 51, 53, 54, 55, 56, and 58 have been objected to for insufficient antecedent basis. Applicants have amended the claims to address the issues raised in the Office Action.

Applicants request that the objections be reconsidered and withdrawn.

Claim Rejection under 35 U.S.C. 112

Claims 24, 27, 29-31, 45-48, 51, 52, 54, 57, and 58 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants have amended the claims to address these issues.

Applicants request that the rejection be reconsidered and withdrawn.

Claim Rejection under 35 USC 103

Claim 55 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Scherübl et al. (WO 98/4435) in view of Galbraith et al. (U.S. Patent 4,512,659). Applicants traverse this rejection.

Embodiments related to claim 55 (e.g., see Fig. 3) are directed to a method of optically detecting at least one entity, the method including, among other things, scanning the at least one entity with a measuring volume using at least one device being confocal or configured for multi-photon-excitation. The device includes a first radiation source and at least one objective. The method further includes, generating an auxiliary focus by means of at least one second radiation source and objective. The method further includes, collimating the radiation generated by the first radiation source by a first optic and collimating the radiation generated by the second radiation source by a second optic different from the first optic. The method further includes a step of adjusting position of the auxiliary focus relative to the measuring volume in a defined manner.

To the contrary, Scherübl, as can be seen in Fig. 8, is limited to a common optical path for all beam paths. Scherübl does not teach or suggest, for example, separate collimation optics for the three lasers having different wavelengths. The relative position of the various foci at different wavelengths is solely determined by the chromatic aberration properties of the common optical path. Scherübl does not teach independently adjusting focus positions relative to each other, as required in the claimed invention.

Thus, Applicants submit that the rejection is deficient at least because Scherübl fails to teach or suggest at least the step of “collimating the radiation generated by the first radiation source by a first optic and collimating the radiation generated by the second radiation source by a second optic different from the first optic.”

Applicants request that the rejection be reconsidered and withdrawn.

Conclusion

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Robert W. Downs (Reg. No. 48,222) at the telephone number of (703) 205-8000, to conduct an interview in an effort to expedite prosecution in connection with the present application.

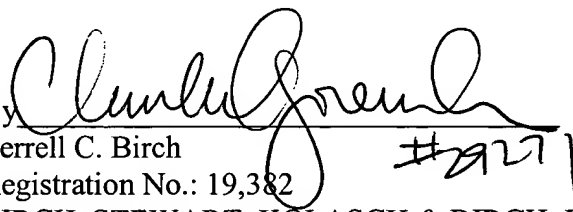
Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), the Applicants respectfully petition for a three (3) month extension of time for filing a response in connection with the present application and the required fee of \$1,020.00 is being filed concurrently herewith.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated:

Respectfully submitted,

RWD

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